

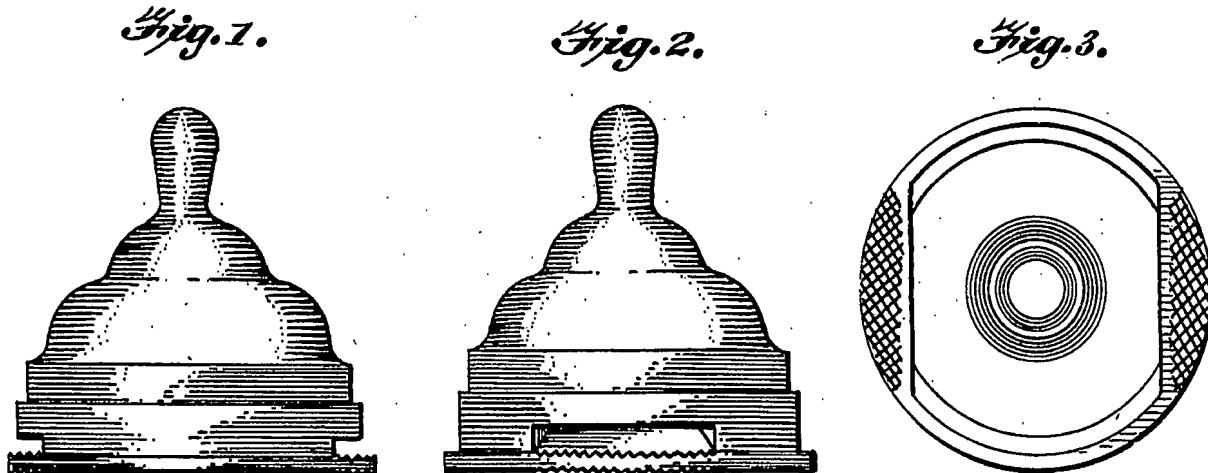
Remarks

Claims 34, 37 through 44, and 57 through 64 are pending in the application. Claims 1 through 33, 35, 36, and 45 through 56 were canceled previously.

The Office Action asserts that under 35 U.S.C. §102(e), claims 34, 37 through 54, and 57 through 64 are anticipated by U.S. Design Patent No. 130,791 to Porthouse. Applicant notes that claims 45 through 54 were canceled by previous amendments and thus are not discussed below.

Independent claim 34 recites a nipple for feeding a baby. The nipple includes a stem having an orifice, a proximal end, and a distal end. An areola region is connected to the proximal end, and the stem is inwardly tapered toward the distal end.

Porthouse fails to anticipate claim 34. Porthouse is a design patent disclosing a nipple having the shape shown below:



A claim is anticipated only if each and every element as set forth in the claim is found in a single reference. To anticipate a claim, a drawing must clearly show all the claimed structural features and how they are put together. See MPEP 2125. Porthouse does not disclose or suggest each element recited in claim 34. Porthouse fails to disclose or suggest a stem having an orifice. Porthouse includes only the three figures shown above. None of the figures show any type of orifice on the stem portion of the nipple.

The Office Action asserts that the “type of nipple as disclose[d] in Porthouse is clearly considered a[n] orifice nipple.” However, the Office has failed to provide any support for this assertion. In a design patent, the drawings constitute the entire disclosure of the design. See MPEP 1503.02. The drawings of Porthouse simply do not show a stem having an orifice. Consequently, Porthouse fails to anticipate claim 34.

Porthouse also fails to disclose or suggest a stem that is inwardly tapered toward a distal end. In fact, Porthouse discloses the opposite: a nipple that tapers toward the proximal end of the stem, as evidenced by comparing FIG. 8 of the application with FIG. 1 of Porthouse, below. In Porthouse, the nipple is wider at the tip or distal end and narrows at the base or proximal end, where it joins the body of the nipple.

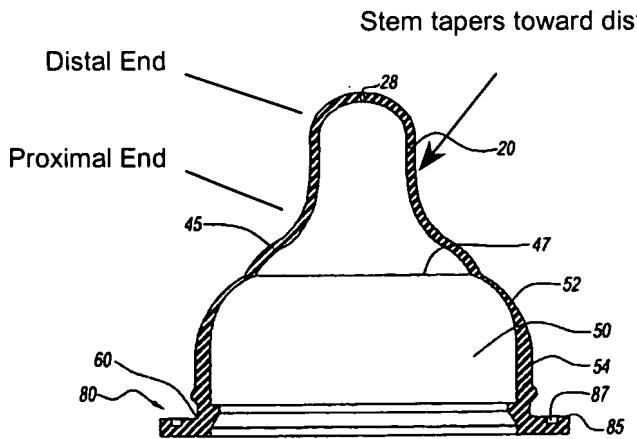


FIG. 8 of application

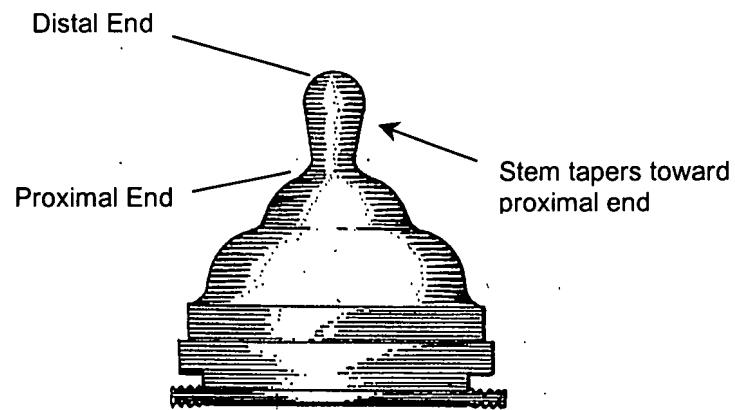


FIG. 1 of Porthouse

The Office Action argues that the nipple of Porthouse is inwardly tapered toward its distal end. As support for this assertion, the Office points to the rounded tip of the nipple, as shown in Fig. 2 of Porthouse, and labels the rounded tip as the “[s]tem’s inwardly tapered end.” The rounded tip shown in the figures of Porthouse does not fall under the ordinary meaning of the word “tapered.” Even assuming, for the sake of argument only, that the rounded tip of the Porthouse nipple could be considered tapered, claim 34 recites a nipple having a stem that is inwardly tapered **toward** a distal

end, not a stem that is inwardly tapered at a distal end. Thus, claim 34 is patentable over Porthouse.

Claims 37 through 44 depend from independent claim 34 and are patentable over Porthouse for at least the reasons given above regarding claim 34.

Claims 41, 42, and 44 recite specific dimensions of a nipple. The Office Action asserts that the nipple disclosed in Porthouse "appears to have dimensions as recited in the claims, due to its being used on baby's mouth." As stated above, Porthouse is a design patent consisting of three figures and a very brief description of each of the figures. The design is described only as a nipple. There is no mention of using the nipple on a baby's mouth, as the Office suggests. Also, patent drawings do not define the precise proportions of elements shown in the drawings and may not be relied on to show particular sizes if the specification is completely silent on the issue. MPEP 2125. Porthouse clearly does not show any sort of dimensions or scale. Consequently, Porthouse cannot be relied on to anticipate the dimensions recited in claims 41, 42, and 44. The Office goes on to argue that "a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." However, the patentability of claims 41, 42, and 44 over Porthouse is not based on a statement of intended use; Porthouse simply does not disclose a nipple having the specific dimensions recited in the cited claims. For this additional reason, claims 41, 42, and 44 are patentable over Porthouse.

Independent claim 57 recites, in pertinent part, a stem having an orifice, a proximal end and a distal end, with the stem being inwardly tapered toward the distal end. Thus, Porthouse fails to anticipated claim 57 for at least the reasons given above regarding claim 34.

Claims 58 through 64 depend from independent claim 57 and are patentable over Porthouse for at least the reasons given above regarding claim 57. In addition,

claims 59 and 64 are patentable over Porthouse for the additional reason that these claims disclose specific dimensions, which again are clearly not shown in Porthouse.

In view of the above, Applicant respectfully submits that all claims presented in this application are patentably distinguishable over the cited reference. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

Respectfully submitted,

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